

STATE OF MICHIGAN
COURT OF APPEALS

KAZHMERE JONES,

Plaintiff-Appellant,

v

PAROLE BOARD,

Defendant-Appellee.

UNPUBLISHED

April 6, 1999

No. 207477

Court of Claims

LC No. 97-016659 CM

Before: O’Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Plaintiff appeals of right from the Court of Claims’ order granting defendant’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed suit against defendant, seeking monetary damages for alleged negligence, gross negligence, and intentional misuse of authority relating to certain of defendant’s parole hearing practices. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) on the ground that plaintiff’s claim was barred by governmental immunity, and MCR 2.116(C)(8) on the ground that the complaint failed to state a claim on which relief could be granted. The Court of Claims granted the motion, holding that plaintiff’s claim was barred by governmental immunity because defendant was a statutorily created entity and because the granting of parole was within defendant’s discretion.

This Court reviews a trial court’s decision on a motion for summary disposition de novo as a matter of law. *Miller v Farm Bureau Mutual Ins Co*, 218 Mich App 221, 233; 553 NW2d 371 (1996).

MCL 691.1407(1); MSA 3.996(107)(1) provides that but for certain exceptions, “all governmental agencies shall be immune from tort liability in all cases wherein the government agency is engaged in the exercise or discharge of a governmental function.” This immunity is very broad in scope, and exceptions must be narrowly construed. *Richardson v Warren Consolidated School Dist*, 197 Mich App 697, 699; 496 NW2d 380 (1992).

There is no general intentional-tort exception to governmental immunity. *Smith v Dep't of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987), aff'd sub nom *Will v Michigan Dep't of State Police*, 491 US 58; 109 S Ct 2304; 105 L Ed 2d 45 (1989). However, unlawful action under color of governmental authority that results in injury is not action in furtherance a governmental function and thus does not come under governmental immunity. *Marrocco v Randlett*, 431 Mich 700, 707-708; 433 NW2d 68 (1988). This exception to governmental immunity is inapplicable in the instant case. To state that defendant, in exercising its discretion to deny plaintiff parole, was acting within the scope of its authority is to state the obvious. MCL 791.234(7); MSA 28.2304(7).

An employee of a governmental agency is not immune from tort liability if that employee acts in a grossly negligent manner that is the proximate cause of injury. MCL 691.1407(2)(c); MSA 3.996(107)(2)(c). This avenue for avoiding the bar of governmental immunity is likewise not available to plaintiff here. Plaintiff's original and amended complaints asserted that defendant acted in a negligent and grossly negligent manner with respect to its parole hearing practices. Plaintiff asserted no claims against an employee of defendant in this action. "When bringing suit against a state agency, plaintiff must plead in avoidance of governmental immunity." *Jones v Williams*, 172 Mich App 167, 171; 431 NW2d 419 (1988). We agree with the trial court that plaintiff, having complained of only discretionary action by a state agency that was clearly within that agency's authority, failed to plead facts in avoidance of immunity.

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins